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Deaf Students Education Services

[OCR-000012]

Agency: Department of Education.
Action: Notice of Policy Guidance.

Summary: The Department provides additional guidance about part B of the Individuals with Disabilities Education Act (IDEA) and section 504 of the Rehabilitation Act of 1973 (section 504) as they relate to the provision of appropriate education service to students who are deaf. This guidance is issued in response to concerns regarding Departmental policy on the provision of a free appropriate public education (FAPE) to students who are deaf. Many of these concerns were expressed in the report of the Commission on Education of the Deaf. This guidance is intended to furnish State and local education agency personnel with background information and specific steps that will help to ensure that children and youth who are deaf are provided with a free appropriate public education. It also describes procedural safeguards that ensure parents are knowledgeable about their rights and about placement decisions made by public agencies.

FOR FURTHER INFORMATION CONTACT:

U.S. DEPARTMENT OF EDUCATION
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SUPPLEMENTARY INFORMATION:

Background

In the past twenty-five years, two national panels have concluded that the education of deaf students must be improved in order to meet their unique communication and related needs. The most recent of these panels, the Commission on Education of the Deaf (COED), recommended a number of changes in the way the Federal government supports the education of individuals who are deaf from birth through postsecondary schooling and training. With this notice, the Secretary implements several COED recommendations relating to the provision of appropriate education for elementary and secondary students who are deaf.

The COED's report and its primary finding[1] reflects a fundamental concern within much of the deaf community that students who are deaf have significant obstacles to overcome in order to have access to a free appropriate public education that meets their unique educational needs, particularly their communication and related needs[2].

The disability of deafness often results in significant and unique educational needs for the individual child. The major barriers to learning associated with deafness relate to language and communication, which, in turn, profoundly affect most aspects of the educational process. For example, acquiring basic English language skills is a tremendous challenge for most students who are deaf. While the Department and others are supporting research activites in the area of language acquisition for children who are deaf, effective methods of instruction that can be implemented in a variety of educational settings are still not available. The reading skills of deaf children reflect perhaps the most momentous and dismal effects of the disability and of the education system's struggle to effectively teach deaf children: hearing impaired students "level off" in their reading comprehension achievement at about the third grade level.[3]

Compounding the manifest educational considerations, the communication nature of the disability is inherently isolating, with considerable effect on the interaction with peers and teachers that make up the educational process. This interaction, for the purpose of transmitting knowledge and developing the child's self-esteem and identity, in dependent upon direct communication. Yet, communication is the area most hampered between a deaf child and his or her hearing peers and teachers. Even the

availability of interpreter services in the educational setting may not address deaf children's needs for direct and meaningful communication with peers and teachers.

Because deafness is a low incidence disability, there is not widespread understanding of its educational implications, even among special educators. This lack of knowledge and skills in our education system contributes to the already substantial barriers to deaf students in receiving appropriate educational services.

In light of all these factors, the Secretary believes it is important to provide additional guidance to State and local education agencies to ensure that the needs of students who are deaf are appropriately identified and met, and that placement decisions for students who are deaf meet the standards of the applicable statutes and their implementing regulations. It is the purpose of this document to (1) clarify the free appropriate public education provisions of IDEA for children who are deaf, including important factors in the determination of appropriate education for such children and the requirement that education be provided in the least restrictive environment, and (2) clarify the applicability of the procedural safeguards in placement decisions.

Nothing in this notice alters a public agency's obligation to place a student with a disability in a regular classroom if FAPE can be provided in that setting.

Free Appropriate Public Education

The provision of a free appropriate public education based on the unique needs of the child is at the heart of the IDEA. Similarly, the section 504 regulation at 34 CFR 104.33-104.36 contains free appropriate public education requirements, which are also applicable to local educational agencies serving children who are deaf. A child is receiving an appropriate education when all of the requirements in the statute and the regulations are met. The Secretary believes that full consideration of the unique needs of a child who is deaf will help to ensure the provision of an appropriate education. For children who are eligible under Part B of the IDEA, this is accomplished through the IEP process. For children determined to be handicapped under section 504, implementation of an individualized education program developed in accordance with Part B of the IDEA is one means of meeting the free appropriate public education requirements of the section 504 regulations.

As part of the process of developing an individualized education program (IEP) for a child with disabilities under the IDEA, State and local education agencies must comply with the evaluation and placement regulations at 34 CFR 300.530-300.534. In meeting the individual education needs of children who are deaf under section 504, LEAs must comply with the evaluation and placement requirements of 34 CFR 104.35 of the Section 504 regulation, which contains requirements similar to those of the IDEA. However, the Secretary believes that the unique communication and related needs of many children who are deaf have not been adequately considered in the development of their IEPs. To assist public agencies in carrying out their responsibilities for children who are deaf, the Department provides the following guidance.

The Secretary believes it is important that State and local education agencies, in developing an IEP for a child who is deaf, take into consideration such factors as:

1. Communication needs and the child's and family's preferred mode of communication;
2. Linguistic needs;
3. Severity of hearing loss and potential for using residual hearing;
4. Academic level; and
5. Social, emotional, and cultural needs including opportunities for peer interactions and communication.

In addition, the particular needs of an individual child may require the consideration of additional factors. For example, the nature and severity of some children's needs will require the consideration of curriculum content and method of curriculum delivery in determining how those needs can be met. Including evaluators who are knowledgeable about these specific factors as part of the multidisciplinary team evaluating the student will help ensure that the deaf student's needs are correctly identified.

Under the least resrictive environment (LRE) provision of IDEA, public agencies must establish procedures to ensure that "to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be

achieved satisfactorily.4 The section 504 regulation at 34 CFR § 104.34 contains a similar provision.

The Secretary is concerned that the least restrictive environment provisions of the IDEA and Section 504 are interpreted, incorrectly to require the placement of some children who are deaf in programs that may not meet the individual student's educational nneds. Meeting the unique communication and related needs of a student who is deaf is a fundamental part of providing a free appropriate public education (FAPE) to the child. Any setting, including a regular classroom, that prevents a child who is deaf from receiving an appropriate education that meets his or her needs including communication needs is not the LRE for that individual child.

Placement decisions must be based on the child's IEP.5 Thus, the consideration of LRE as part of the placement decision must always be in the context of the LRE in which appropriate services can be provided. Any setting which does not meet the communication and related needs of a child who is deaf, and therefore does not allow for the provision of FAPE, cannot be considered the LRE for that child. The provision of FAPE is paramount, and the individual placement determination about LRE is to be considered within the context of FAPE.

The Secretary is concerned that some public agencies have misapplied the LRE provision by presuming that placements in or closer to the regular classroom are required for children who are deaf, without taking into consideration the range of communication and related needs that must be addressed in order to provide appropriate services. The Secretary recognizes that the regular classroom is an appropriate placement for some children who are deaf, but for others it is not. The decision as to what placement will provide FAPE for an individual deaf child — which includes a determination as to the LRE in which appropriate services can be made available to the child — must be made only after a full and complete IEP has been developed that addresses the full range of the child's needs.

The Secretary believes that consideration of the factors mentioned above will assist placement teams in identifying the needs of children who are deaf and will enable them to place children in the least restrictive environment appropriate to their needs.

The overriding rule regarding placement is that placement decisions must be made on an individual basis.6 As in previous policy guidance, the Secretary emphasizes that placement decisions may not be based on category of disability, the configuration of the delivery system, the availability of educational or related services, availability of space, or administrative convenience.

States and school districts also are advised that the potential harmful effect of the placement on the deaf child or the quality of services he or she needs must be considered in determining the LRE.

The Secretary recognizes that regular educational settings are appropriate and adaptable to meet the unique needs of particular children who are deaf. For others, a center or special school may be the least restrictive environment in which the child's unique needs can be met. A full range of alternative placements as described at 34 CFR 300.551(a) and (b)(1) of the IDEA regulations must be available to the extent necessary to implement each child's IEP. There are cases when the nature of the disability and the individual child's needs dictate a specialized setting that provides structured curriculum or special methods of teaching. Just as placement in the regular educational setting is required when it is appropriate for the unique needs of a child who is deaf, so is removal from the regular educational setting required when the child's needs cannot be met in that setting with the use of supplementary aids and services.

Procedural Safeguards

One important purpose of the procedural safeguards required under part B and the section S04 regulations is to ensure that parents are knowledgeable about their rights and about important decisions that public agencies make, such as placement decisions. Under the section 504 regulations at 34 CFR 104.36, a public agency must establish a system of procedural safeguards that includes, among other requirements, notice to parents with respect to placement decisions. Compliance with the part B procedural safeguards is one means of meeting the requirements of the section 504 regulations. Under part B, before a child is initially placed in special education the child's parents must be given written notice and must consent to the placement. The part B regulations at 34 CFR300.500(a) provide that consent means that parents have

been fully informed of all information relevant to the placement decision. The obligation to fully inform parents includes informing the parents that the public agency is required to have a full continium of placement options available to meet the needs of children with disabilities, including instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions.

The part B regulations at 34 CFR 300.504 - 300.505 also require that parents must be given written notice a reasonable time before a public agency proposes to initiate or change the identification, evaluation, educational placement or provision of a free appropriate public education to the child. This notice to parents must include a description of the action proposed or refused by the agency, an explanation of why the agency proposes or refuses to take the action, and a description of any options the agency considered and the reasons why those options were rejected. The requirement to provide a description of any option considered includes a description of the types of placements that were actually considered , e.g., special school or regular class, as well as any specific schools that were actually considered and the reasons why these placement options were rejected. Providing this kind of information to parents will enable them to play a more knowledgeable and informed role in the education of their children.

1 The present status of education for persons who are deaf in the United States is unsatisfactory. Unacceptably so,. This is the primary and inescapable conclusion of the Commission on Education of the Deaf." Commission on Education of the Deaf: Toward Equality; Education of the Deaf. (February 1988).

2As stated in the IDEA, the purpose of the Act is * * * to assure that all children with disabilities have available to them * * * a free appropriate public education which emphasizes special education and related services designed to meet their unique needs * * * (20 U.S.C. sec. 1408(c).

In addition, the section 504 regulations state:

A recipient (of federal financial assistance) that operates a public elementary or secondary education program shall provide a free appropriate public education to each

qualified handicapped person * * * regardless of the nature or severity of the person's handicap. 34 CFR Section 104.33(a).

3Thomas E. Allen, "Patterns of Academic Achievement Among Hearing Impaired Students: 1974 and l983," in Deaf Children in America. 182-184. (Arthur N. Schildroth and Michael A. Karchman, eds. San Diego: College-Hill Press (1984)

4 20 U.S.C. sec. 1412(5)(B).

5 20 U.S.C. sec. 1401(18): see also 34 CFR 300.552(a)(2); and 34 CFR 104.33(b)(2).

6 34 CFR 300.552 Comment. See also Appendix A to 34 CFR 104.24.

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Secretary.
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